

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

NO. 17-CR-20406

vs.

HON. PAUL D. BORMAN

D-5 KEITH MICKENS,

Defendant.

/

SENTENCING MEMORANDUM OF THE UNITED STATES

I. Introduction

Keith Mickens was a senior United Auto Workers official who betrayed the trust placed in him by the rank and file members of the union. Mickens took thousands of dollars in illegal, prohibited payments for his own personal benefit from Fiat Chrysler Automobiles US LLC (“FCA” or “Fiat Chrysler”). Mickens personally approved over \$700,000 in illegal payments from FCA to UAW Vice President General Holiefield and Holiefield’s wife, co-defendant Monica Morgan. Mickens also facilitated illegal payments from FCA to co-defendant Nancy Johnson, who was the second highest UAW official in the FCA/Chrysler Department after Holiefield retired.

Mickens' criminal activity in betraying tens of thousands of UAW members was serious, and it is deserving of a serious punishment. The Court needs to deter other union officials from engaging in similar misconduct. In addition, however, the Court's sentence should reflect Mickens' acceptance of responsibility and his substantial assistance to the government in its ongoing investigation.

II. Analysis of Sentencing Factors

A. Sentencing Guideline Issues

1. Guideline Range and the Amount of Illegal Payments

Other than the abuse of trust dispute noted below, the parties are in agreement as to the correct sentencing guideline range applicable in this case. In the Rule 11 agreement, the parties agreed that the amount of prohibited Taft-Hartley payments for which Mickens is responsible is over \$550,000, for a 14-level enhancement. However, in his amended sentencing memorandum, counsel for Mickens references a possible 12-level enhancement instead of the agreed 14-level upward adjustment set forth in the Rule 11 agreement. *See* Mickens' Amended Sentencing Memorandum, Docket No. 151-3 at PgID 1853. Counsel for Mickens has indicated that this reference in the sentencing memorandum is in error, and that Mickens stands by the agreed guideline range provided for by the Rule 11 agreement and found by the Probation Department in the PSR—except for the abuse of trust issue.

2. Abuse of Position of Trust Adjustment

In the PSR, the Probation Officer found that a two-level adjustment should be applied to Mickens' guideline range based on his abuse of a position of trust under Section 3B1.3. PSR ¶ 19. In the Rule 11 agreement, the government also sought application of this enhancement, with Mickens retaining the right to argue the issue at sentencing. Mickens Plea Agreement at 9.

In his sentencing papers, Mickens argues that the enhancement should not apply because he was simply following the orders of Holiefield. However, the enhancement should apply to Mickens because he was a high-level UAW official whose position of trust allowed him to take, to approve, and to facilitate prohibited and illegal Taft-Hartley payments. During his involvement in the conspiracy, Mickens held the third highest position in the UAW's FCA/Chrysler Department, under UAW Vice President Holiefield. Reporting directly to Holiefield, Mickens took on the position of Co-Director of the joint UAW-FCA National Training Center ("NTC"). In addition, also by virtue of his UAW position, Mickens was a member of the Joint Activities Board of the NTC.

As the third highest official in the UAW's FCA/Chrysler Department, Mickens had wide professional and managerial discretion as characterized by positions of trust under Section 3B1.3, cmt. 1. As the right-hand man of Vice

President Holiefield, Mickens was responsible for, among other things, the supervision and oversight of the NTC. As a senior UAW official, Mickens had the trust of over 45,000 Fiat Chrysler UAW rank and file members and their families to act in their best interests. Mickens argues that the enhancement should not apply because his actions were similar to the bank teller or hotel clerk identified in the sentencing guidelines as not having the responsibility or discretion necessary for the enhancement to apply. As Co-Director of the National Training Center and senior UAW official, however, Mickens was more akin to a bank executive than a teller.

Mickens' responsibilities and actions definitively establish that he used his position of trust to commit the crime. As Co-Director of the NTC, Mickens was responsible for reviewing and approving all payments to be made by the NTC. Thus, for example, knowing that the money was coming from Fiat Chrysler, Mickens reviewed and approved of hundreds of thousands of dollars in payments made by Fiat Chrysler to co-defendant Monica Morgan and Holiefield through the NTC. Mickens approved these payments knowing that they were illegal and improper payments to Holiefield or bogus shell companies that would benefit Holiefield and his wife. As a high-level union official, a Co-Director of the NTC, and a member of the board of the NTC, it was Mickens' responsibility to ensure that the payments he

approved were not improper or illegal. Mickens' involvement in the conspiracy could not be a clearer example of the abuse of trust enhancement.

3. Applicable Sentencing Guideline Range

Including the adjustment for abuse of trust, Mickens' sentencing guideline range is 24 to 30 months. Under the terms of the plea agreement, the possible sentence of imprisonment was capped at 27 months under Federal Rule of Criminal Procedure 11(c)(1)(C).

B. Seriousness of the Offenses

The Labor Management Relations Act of 1947, better known as the Taft-Hartley Act, sought to deter and punish the real danger that union officials, who are supposed to represent the best interests of their rank and file members, could be corrupted by corporations seeking to buy labor peace or bribe their way to concessions at the bargaining table. This investigation and prosecution has revealed that there was a culture of corruption in the senior leadership of the United Auto Workers union. Leaders of the UAW viewed the National Training Center as a mechanism to take apparently unlimited and illegal payments from Fiat Chrysler for their own personal benefit, for the benefit of the union itself, and for their own lavish entertainment.

Through his political savvy within the UAW, Mickens reached the highest levels of the UAW's Chrysler Department. He became ensconced in that culture of corruption where acceptance of lavish entertainment and personal freebies, all paid for by the car company, was the rule rather than the exception. As Co-Director of the National Training Center, Mickens should have been dedicated to improving the working lives and conditions of the tens of thousands of UAW members. Mickens should have been ensuring that the millions of dollars made available for the purpose of training and health and safety through the National Training Center were used for their intended purpose. Instead, Mickens chose to ignore his fiduciary responsibilities and his sacred trust to the rank and file membership and help direct hundreds of thousands of dollars in dedicated training funds to the corrupt personal use of UAW Vice President Holiefield and his wife, Monica Morgan. Along the way, Mickens took advantage of his position to use his NTC credit card for thousands of dollars in personal purchases. He also enjoyed the lavish and obscene entertainment that came with his position as Co-Director of the NTC and senior UAW leader.

Although Mickens asserts that he was just following the orders of more senior UAW leaders like Holiefield, the reason the rank and file membership placed its trust in Mickens as a senior UAW leader was so that he would exercise *leadership*

on behalf of them and their families. Mickens failed them and chose the easier course of wallowing in that culture of corruption.

As Co-Director of the NTC, Mickens approved the payment of corrupted invoices worth over \$700,000. These monies were aimed at personally and directly benefitting Holiefield and Morgan, not the 45,000 UAW members working for Fiat Chrysler.

Mickens also served as a fiduciary of the Leave the Light On Foundation, Holiefield's bogus charity that was also used to funnel Fiat Chrysler money to Holiefield and Morgan. This vanity charity was the common practice of UAW Vice Presidents and an expected perk of their exalted status. As a board member of the Leave the Light on Foundation, Mickens approved hundreds of thousands of dollars in illegal payments to Holiefield by way of the "charity."

C. Respect for the Law and Just Punishment

The Court's sentence for Mickens' crime needs to promote respect for the law and impose just punishment for his misconduct. Mickens was a high-level UAW official, and he intentionally acted to violate federal law for his own personal benefit and for the benefit of an even more senior UAW official. Over 45,000 hourly employees for FCA were represented by the UAW during the period of the conspiracy. These men and women believed that their union leaders were looking

out for their best interests and negotiating in good faith, not double dealing them for personal gain. Through their involvement in this criminal conspiracy, however, Mickens and other senior UAW leaders were accepting corrupt payments from FCA and its executives. It is difficult to calculate the harm that resulted to the grievance process, the bargaining process, and labor relations generally. There is no doubt, however, about the need to impose punishment for the wrongdoing and to vindicate the rule of law in the face of such long-standing and extensive criminal conduct.

In Mickens' case, part of just punishment is a recognition of sincere acceptance of responsibility and remorse. Mickens has openly and completely accepted responsibility for his involvement in the culture of corruption which was, at least, the UAW's Chrysler Department. Furthermore, Mickens' acceptance of responsibility was not just limited to the thousands of dollars in personal expenses he accepted, but also included the wider aspects of the conspiracy reflected in the gross misconduct of Holiefeld and Morgan. Mickens has pleaded guilty and done what he could to make things right by cooperating with the continuing investigation. The Court's sentence should take into account Mickens' cooperation and acceptance of responsibility in determining an appropriate sentence.

D. Deterrence

Millions of Americans are members of labor unions. They depend on the leadership of their unions to act zealously in the best interests of the membership and their families. Given the importance of the integrity of good faith and honest-dealing in labor-management negotiations, general deterrence is a critical component of the Court's sentence in this case. Senior union officials need to know that labor corruption will be punished. They need to know that they occupy positions of trust over their members and their families. Union leaders must conduct themselves at the highest level of honesty, integrity, and transparency. Union leaders in this city and across the country are watching this case, and the Court can instruct those union officials with the knowledge that union officials who accept or facilitate illegal payments from employers will receive significant punishment.

III. Conclusion

For years, Mickens took advantage of his position as a senior UAW official in order to take thousands of dollars in illegal payments from Fiat Chrysler. Mickens willingly participated and acted at the direction of UAW Vice President Holiefield in order to facilitate hundreds of thousands of dollars in illegal payments from Fiat Chrysler. During the conspiracy, the UAW's FCA/Chrysler Department was riddled with corruption, and it was fatally compromised in its ability represent the best

interests of the UAW's members and their families. Instead of zealously pursuing union grievances and health and safety issues, senior officials of the UAW sought to line their own pockets with money and things of value provided to them by Fiat Chrysler.

To his credit, Mickens recognized his wrongdoing and accepted responsibility for his criminal activity. Beyond just accepting responsibility, however, Mickens has acted to cooperate with the government's investigation so as to rectify the corruption. The Court should recognize these efforts and sentence Mickens to a term of 16 months of imprisonment so as to achieve the goals of Section 3553(a).

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Dated: October 31, 2018

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, I caused the foregoing document to be electronically filed with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

Counsel of Record for Keith Mickens

*s/*David A. Gardey
DAVID A. GARDEY
Assistant United States Attorney

Dated: October 31, 2018